

## The Library Board and the Public Records Law

*This Trustee Essential covers:*

- *Actions all boards must take to comply with the law—before and after receiving records requests.*
- *Records that must be available to the public—and records that are confidential.*

Wisconsin's public records law provides that almost all records of state and local government (which includes public libraries) be available for inspection and/or copying by the public.

### Responding to requests

Your library must respond to all requests to view or copy public records made by any person (except most requests from individuals who are committed or incarcerated). The request need not be in writing, and the requester need not be a resident of the state. Generally, you cannot require the requester to give his/her name or the purpose of his/her request. Acceptable identification may be required only when necessary for security reasons or when required by federal law or regulation.

Public records requests must be responded to “as soon as practicable and without delay.” Any denial of a written request for records must include a written statement of the reasons for denying the request and must inform the requester that the determination is subject to review by mandamus (a writ from a court ordering performance of an act) or upon application to the attorney general or district attorney.

### What records must be made available for viewing or copying?

Except as otherwise provided by law, any requester has the right to inspect or receive a copy of any public record. This applies to records in any format—paper, computer file, recording, email, etc.

An important exception to the public records law for libraries is the statutory prohibition on release of records that identify an individual who uses a publicly funded library (Wisconsin Statutes Section 43.30). This information can be released only with the consent of the individual or by court order or (under certain circumstances) to other libraries for interlibrary loan purposes. Any record produced in response to a public records request that contains patron information in addition to information which must be disclosed must first be edited to remove any information which could identify an individual library patron, such as a patron's name, address, or phone number.

The law does not require public access to staff notes, drafts, and similar items prepared for staff personal use. Also excluded are purely personal property having no relation to the

owner's public office and material to which access is limited by copyright, patent, or bequest.

## **Records custodian responsibilities**

Every public library board must approve a resolution designating one or more legal custodians to respond to public records requests. If the board has failed to make such a designation, the library board president and the director are responsible for responding to public records requests. The mayor, village president, or town chair of your community may have the option of appointing the legal custodian for library records. The records custodian(s) must designate one or more deputies to act in his or her absence.

The library board must also approve and prominently display in the library a notice identifying the legal records custodian(s), establishing the time, place, and method for requesting records, and indicating any copying costs. Generally, public records must be available for inspection during all regular office hours.

## **Personnel records**

Common law (judge-made law) allows the denial of certain requests for access to public records if the balance of interests favors nondisclosure. Some of the cases in which the courts have upheld nondisclosure involve certain personnel records of public employees; however, the Wisconsin Supreme Court has also held that personnel records are not automatically excluded from disclosure.

The records custodian is required to balance the public interest in disclosure of the record against the interests that may weigh against disclosure. See the League of Wisconsin Municipalities article on personnel records and the public records law (at <http://www.lwm-info.org/legal/faq/faq28.html>) for more information.

If, after conducting the balancing test, you determine that a requester is entitled to the release of personnel records or other records with information compromising the privacy or reputation of a person, you should contact your municipal or county attorney. It is likely that you will be required to notify the person who is the subject of the records and give that person an opportunity to contest the release of the records in court.

You should also be aware that employees and former employees have the right to inspect some of the records in their personnel file. The limits to this right are spelled out in Wisconsin Statutes Section 103.13.

If you receive any request for access to personnel records, requests for information about applicants for a library position, or any other request that involves personal privacy interests, it is recommended that you consult with your municipal or county attorney.

## **Individuals may inspect information about themselves**

In addition to the right of citizens to examine public records, any individual or person authorized by that individual has a right to inspect most records containing "personally identifiable information pertaining to the individual." There are limitations to this right,

which are explained in detail in a League of Wisconsin Municipalities article available at <http://www.lwm-info.org/legal/faq/faq30.html>.

## **Personal Information Practices Act**

This part of the Wisconsin public records law (Sections 19.62 to 19.80) requires state and local government organizations (including libraries) to develop procedures to protect the privacy of personal information kept by the organization. Libraries (and all other government organizations) are required to develop rules of conduct for employees involved in collecting, maintaining, using, and providing access to personally identifiable information. You are also required to ensure that employees handling such records “know their duties and responsibilities relating to protecting personal privacy, including applicable state and federal laws.”

## **Can we charge for copying and other costs?**

You may charge a fee not to exceed “the actual, necessary and direct cost” of reproduction and mailing. A locating fee may be charged only if the “the actual, necessary and direct cost” of locating the records exceeds \$50.

## **Records retention**

The law strictly prohibits destruction of records that are the subject of a pending or recently handled records request.

Municipal and county governing bodies can adopt ordinances that provide for the destruction of obsolete public records. However, the period of time for retention provided by these ordinances cannot be less than seven years for most records. Library system official records need to be retained at least ten years, as required by the Wisconsin Administrative Code.

Tape recordings of meetings may be destroyed 90 days after the minutes have been approved and published, if the purpose of the recording was to make written minutes of the meeting.

Prior to destroying public records, you must give the State Historical Society at least 60 days written notice. The Historical Society may, upon application, waive this notice requirement. The Historical Society will preserve any records it determines to be of historical interest.

## **Penalties for violations**

An organization or legal custodian that improperly denies or delays a request may be ordered to pay the requester’s attorney fees and other actual costs, besides damages of not less than \$100. In addition, an organization or legal custodian that arbitrarily and capriciously denies or delays response to a request, or charges excessive fees, may be required to forfeit not more than \$1000 in punitive damages. In addition, there are criminal penalties for destruction or concealment of public records with intent to injure or defraud or for deliberately altering public records.

**Discussion Questions:**

1. What purpose is served by Wisconsin's public records law?
2. Why are library patron records kept confidential?
3. If the local press requests records related to disciplinary action taken against the library director, must those records be disclosed? Why or why not?
4. How long do we *need* to retain library board meeting minutes? How long *should* we retain library board meeting minutes?

**Sources of Additional Information:**

Your library system staff (see *Trustee Tool B: Library System Map and Contact Information*)

Public records / open meetings information from the Wisconsin Department of Justice (at <http://www.doj.state.wi.us/dls/goal.asp#pubrec>)

League of Wisconsin Municipalities FAQs on the public records law (at <http://www.lwm-info.org/legal/faq.html#records>)

The State Historical Society of Wisconsin's *Wisconsin Municipal Records Manual* (available at <http://www.shsw.wisc.edu/archives/locrecs/manual>)

Your municipal or county attorney, your district attorney, or the Wisconsin Attorney General

*This Trustee Essential provides only a general outline of the law and should not be construed as legal advice in individual or specific cases where additional facts might support a different or more qualified conclusion.*

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